

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND IMO CO., INC AND JEFFREY G. KESTER

Come now IMO Co., Inc. ("IMO") and Jeffrey G. Kester ("Kester"), collectively "Licensees," and the Missouri Real Estate Commission ("Commission") and enter into this Settlement Agreement for the purpose of resolving the question of whether IMO's license as a real estate corporation and Kester's licenses as a real estate broker officer and broker associate will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensees' licenses, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensees acknowledge that Licensees understand the various rights and privileges afforded Licensees by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensees proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against Licensees; the right to present evidence on Licensees' own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensees and, subsequently, the right to a disciplinary hearing before the Commission at which time Licensees may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensees' licenses. Being aware of these rights provided them by operation of law, Licensees knowingly and voluntarily waive each and every one of these rights and freely enter into this Settlement Agreement and agree to abide by the terms of this document, as they pertain to Licensees.

Licensees acknowledge that Licensees have received a copy of the documents relied upon by the Commission in determining there was cause to discipline Licensees' licenses, along with citations to law and/or regulations the Commission believes were violated.

For the purpose of settling this dispute, Licensees stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Commission that Licensee IMO's real estate corporation license, numbered 000007311 and Kester's licenses, numbered 1999029643 (broker officer), 2005010607

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

(broker associate), 2008033363 (broker officer) and 2014040266 (broker associate), are subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

Joint Stipulation of Facts and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, IMO CO., Inc., holds a real estate corporation license from the Commission, license number 000007311. The Commission issued IMO's license on May 2, 1994. IMO's license expires June 30, 2020. IMO's license was current and active at all times relevant herein. Licensee Jeff Kester is the designated broker for IMO.

3. Licensee, Jeffrey G. Kester, holds an active real estate broker officer license from the Commission, license number 1999029643. The Commission issued Kester's active broker officer license on November 7, 1997. Kester's license, number 1999029643, expires June 30, 2020. Kester's license, number 1999029643, was current and active at relevant times described below. Kester holds the following expired additional licenses: broker associate, number 2005010607, issued March 23, 2005 and expired June 30, 2016; broker officer, number 2008033363, issued October 30, 2008, expired June 30, 2016, and broker associate, issued November 13, 2014 and expired June 30, 2018.

4. The Commission received information from IMO Co., Inc., that two affiliated agents failed to renew their licenses in 2016 but continued to conduct licensed real estate activity from September 30, 2016 to March 2018. Based on that information, the Commission initiated an investigation.

5. The Commission's investigation revealed:

- a. Licensee Kester stated that in March 2018, they began looking at licensee Tara Sartin for rookie agent of the year and realized she did not have a current license.
- b. Sartin stated she had renewed her license for the 2016-2018 renewal period. When they could not locate her current license, Kester stated they looked into the matter and realized that Sartin sent her renewal information but had not signed a portion of the renewal and the Commission

returned it to her. Sartin re-submitted the application but it was after the date so a late fee was generated but he alleged that neither Sartin nor the office received a notice from the Commission related to the late fee. Kester stated they immediately contacted the Commission and Sartin renewed her license.

- c. Sartin confirmed Kester's information when the Commission interviewed her during the investigation. She also stated that she was not aware that her license had not been sent to her because they are sent directly to her broker. She stated her broker, Kester, never provided her with any notice that IMO Co., Inc., had not received her license.
- d. Sartin conducted real estate activity without a valid real estate license from October 1, 2016 to March 16, 2018. Sartin earned \$71,612.65 in commissions and IMO earned \$27,066.99 in commissions from Sartin's sales.
- e. Kester stated that as a result of Sartin's license lapse, IMO checked all the agent files and discovered another agent, Samuel Wardlaw did not have a valid real estate license from October 1, 2106 to June 11, 2018. Kester stated that Wardlaw earned \$25,218.65 in commissions during the unlicensed period and IMO received \$5,884.42 based on those sales.
- f. Wardlaw stated that he failed to renew his license and it was an oversight. Wardlaw stated that Kester told him to stop working in March 2018 following the audit of licenses and he did. Wardlaw stated he does not do much licensed real estate work.
- g. Kester stated he took over as the designated broker for IMO in November 2016 and "assumed that all of the licenses had been renewed in September 2016." Commission records demonstrate Kester became the designated broker for IMO on October 27, 2016.
- h. Kester stated that as soon as he determined Sartin and Wardlaw did not have valid licenses, he told them to stop working and initiated a policy to audit agent files every three months. He stated he self-reported the incidents to the Commission.

6. Licensees' conduct, as described in paragraphs 4 and 5 above, allowing the provision of real estate services without a valid license, constitutes cause to discipline Licensees' licenses.

7. Section 339.020, RSMo, states:

It shall be unlawful for any person, partnership, limited partnership, limited liability company, association, professional corporation, or

corporation, foreign or domestic, to act as a real estate broker, real estate broker-salesperson, or real estate salesperson or to advertise or assume to act as such without a license first procured from the commission.

8. Regulation 20 CSR 2250-4.020(2) states, in relevant part:

...

Until a new license is procured, the holder of an expired license shall not perform any act for which a license is required.

9. Cause exists for the Commission to take disciplinary action against Licensees' licenses under § 339.100.2(15), (19) and (23), RSMo, which states in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

...

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and section 339.710 to 339.860* who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860*[.]

Joint Agreed Disciplinary Order

10. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

11. The terms of discipline shall include that **Licensees shall pay a civil penalty in the amount of \$1,000.00 pursuant to § 339.100.3, RSMo.** The civil penalty shall be made by certified check payable to the

"Missouri Real Estate Commission" and mailed to the Missouri Real Estate Commission, PO Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or hand delivered within 60 days of the effective date of this Settlement Agreement. Funds received pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and Section 339.205.8, RSMo. Respondents' failure to pay the full amount of the \$1,000 civil penalty within sixty days of the effective date of this Order shall constitute a violation of this Order.

12. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

13. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensees of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

14. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

15. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

16. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

17. Licensees, together with Licensees' heirs and assigns, and Licensees' attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this Settlement Agreement. The

parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof to be void or unenforceable.

18. If no contested case has been filed against Licensees, Licensees have the right, either at the time the Settlement Agreement is signed by all parties or within fifteen days thereafter, to submit the Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the Settlement Agreement constitute grounds for denying or disciplining the licenses of Licensees. If Licensees desire the Administrative Hearing Commission to review this Agreement, Licensees may submit this request to: **Administrative Hearing Commission, United States Post Office Building, P.O. Box 1557, 131 West High St., Jefferson City, MO 65102.**

19. If Licensees have requested review, Licensees and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensees' licenses and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensees' licenses. Effective the date the Administrative Hearing Commission determines that the Agreement sets forth cause for disciplining Licensees' licenses, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensees as allowed by law. If Licensees do not submit the Agreement to the Administrative Hearing Commission for determination, the Agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEES

IMO Co., Inc by [Signature]
IMO Co., Inc
Jeffrey G. Kester, Designated Broker

[Signature]
Jeffrey G. Kester

Date 2/8/19

COMMISSION

[Signature]
Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date FEBRUARY 19, 2019